

SUPERFUND REMOVAL PROCEDURES

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NOTICE

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establishing a total project ceiling recorded in the Action Memorandum; cost projection during a response allows the OSC to anticipate the need for increases in the project ceiling or an exemption to the \$2 million statutory limit.

b. Cost Control

Cost control consists of cost planning and monitoring as well as verification of costs. OSCs are in the most advantageous position to control response costs if they keep informed on the availability of cost-effective resources. Thus, OSCs should: identify non-commercial support services and response equipment available to the Region; familiarize themselves with cost-effective cleanup services in the event contracting outside the ERCS network is required; maintain information on the cost of obtaining, operating and maintaining safety equipment; and review OSC reports of costs at past responses.

In addition, OSCs are responsible for monitoring site work and verifying that the contractor has provided the personnel, equipment, expendables and subcontractors for which it has charged the government. Section F.3.c below discusses these cost control functions more fully. OSCs should note the strict limitations under the NCP and EPA contract management policies for delegating these responsibilities to non-Federal personnel such as the TAT or State officials not operating under a Cooperative Agreement.

c. Cost Documentation

Cost documentation refers to the specific set of procedures that OSCs use to maintain a record of all on-site activities and associated costs. The method of cost documentation must be consistent from day to day at a specific response. The method an OSC selects must ensure thorough recordkeeping on the following six information items:

- Chronology of events and decisions
- Site conditions
- Movement of personnel and equipment (e.g., site entry and exit)
- Contractor planned and authorized work compared to actual accomplishments
- Contractor costs (e.g., commercial cleanup contracts, letter contracts with States and localities)
- Oversight costs where PRPs undertake action and the Administrative Order does not waive oversight costs

Other costs (e.g., NCLP services, TAT, ERT, Regional laboratory services, IAGs, direct HQ and Regional intramural obligations, site access/acquisition).

The Removal Cost Management Manual provides guidance on methods OSCs can use to determine each category of cost and includes examples of the various types of documents OSCs can use to record information (e.g., POLREPs, entry/exit log, incident obligation log).

OSCs should note that the specific cost items to be documented vary depending upon the purpose of the documentation. Tracking actual costs against the project ceiling and \$2 million limit, for example, does not include costs associated with 104(b) investigations; such costs are tracked, by contrast, in order to support a cost recovery action.

d. Importance of Cost Documentation

Due to the possibility of a cost recovery action or other circumstance (e.g., a challenge to the selection of response action, a claim for reimbursement under CERCLA §106(b)) for any case involving the expenditure of CERCLA funds, OSCs have a responsibility to observe, document and preserve critical facts about the response and its costs. The cost documentation efforts described above are designed to assure that potential evidence concerning the release and responsible parties is recorded before response activity or the passage of time obscures or eliminates it; that physical evidence essential for a trial is collected and preserved in a manner that will withstand judicial scrutiny; and that the government has maintained sufficient evidence of total costs and substantiation of the need to incur those costs.

The essential elements of a cost recovery action and the nature of evidence required to sustain such an action are:

- . Evidence of a release or threat of release of a hazardous substance
- . Evidence of the liability of the defendant(s) under §107(a) of CERCLA for the hazardous substance
- . Substantiation that response actions for which CERCLA funds were expended were not inconsistent with the NCP
- . Proof of incurred costs.

Further guidance on this subject has been issued by the Office of Enforcement Counsel and Compliance Monitoring and OSWER. See "Guidance On Pursuing Cost Recovery Actions Under CERCLA," August 1983 and "Procedures for Documenting Costs for CERCLA §107 Actions" issued by OWPE (January 30, 1985).